

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EUGENE BRIAN GARVIE,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. C24-1017 BHS

ORDER

THIS MATTER is before the Court on Magistrate Judge Grady J. Leupold's Report and Recommendation (R&R), recommending the Court deny pro se petitioner Eugene Brian Garvie's second or successive 28 U.S.C. § 2241 habeas petition, deny a Certificate of Appealability, and dismiss the case without prejudice. Dkt. 9.

The R&R was originally noted for August 1, 2024. Dkt. 9 at 1. On July 26, Garvie filed a request for a copy of the R&R, asserting that "on 7/19/2024, the 'Electronic Copy Filed' electronically (ECF) receipt was served, but not the Magistrate's Report and Recommendation." Dkt. 10 at 1 (boldface omitted). That same day, the Clerk's office sent Garvie a copy of the R&R, and the Court renoted the R&R to August 9, 2024, to

1 provide Garvie 14 additional days to object. Dkts. 10, 11. Garvie has not filed any  
2 objections to the R&R.

3 A district judge must determine de novo any part of a magistrate judge's proposed  
4 disposition *to which a party has properly objected*. It must modify or set aside any  
5 portion of the order that is clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a). The  
6 district judge may accept, reject, or modify the recommended disposition; receive further  
7 evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P.  
8 72(b)(3). A proper objection requires "specific written objections to the proposed  
9 findings and recommendations" in the R&R. Fed. R. Civ. P. 72(b)(2).

10 Garvie's habeas petition is his fourth such filing, and this Court does not have  
11 subject matter jurisdiction over it:

12 Before a petitioner is allowed to file a second or successive petition, he  
13 must obtain an order from the Court of Appeals authorizing the district  
14 court to consider the petition. 28 U.S.C. § 2244(b)(3); Rule 9 of the Habeas  
15 Rules; Ninth Circuit Rule 22-3; *see also Woods v. Carey*, 525 F.3d 886,  
16 888 (9th Cir. 2008). In the absence of such an order authorizing review, a  
17 district court lacks jurisdiction to consider a second or successive petition.  
18 *See Magwood*, 561 U.S. at 331; *Burton v. Stewart*, 549 U.S. 147, 157  
19 (2007).

20 Dkt. 9 at 5.

21 The R&R is **ADOPTED**. The petition is **DENIED**, the Court will not issue a  
22 Certificate of Appealability, and the case is **DISMISED without prejudice**.

The Clerk shall enter a **JUDGMENT** and close the case.

**IT IS SO ORDERED.**

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1 Dated this 9th day of August, 2024.

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4 BENJAMIN H. SETTLE  
5 United States District Judge  
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